MOTION FILED
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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. 79-1172

RICHARD G. HARVEY, JR.,

Petitioner,

v.

SYLVESTER HARRIS,

Respondent.

MOTION FOR LEAVE TO FILE BRIEF AND BRIEF AMICUS CURIAE OF THE VOLUNTARY ASSOCIATION OF THE TRIAL JUDGES OF WISCONSIN

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February 4, 1980

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AMICUS CURIAE

The Voluntary Association of the Trial Judges of Wisconsin respectfully moves for leave to file the attached brief amicus curiae in this case. The consent of the attorneys for the petitioner has been obtained. The consent of the attorney for the respondent was requested but refused.

The nature of the interest of the Voluntary Association of the Trial Judges of Wisconsin is as

follows:

The Voluntary Association of the Trial Judges of Wisconsin, founded in 1975, is an association of trial judges of the Wisconsin judiciary, whether active, retired or of reserve status, including retired Wisconsin Supreme Court justices.

Among the purposes of the Voluntary Association of the Trial Judges of Wisconsin is to improve the efficient administration and quality of justice in the State of Wisconsin; to determine and publicly express when appropriate the view point of its members on issues affecting the judicial system; and to insure the independence of the judiciary, upon the premise that the independent, honest and effective administration of justice is the bulwark of good government and democratic society. The Association filed a brief amicus curiae in this case with the United States Court of Appeals for The Seventh Circuit.

The Association is interested in the issues of judicial immunity, and color of law, as they

have arisen in the above-captioned case. The Associa believes that its participation as amicus curiae is especially important in that the significance of this case goes beyond the interests of the party litigants, and affects the interests of all trial judges in Wisconsin. For that reason, the Association believes that the questions relating to judicial immunity and color of law may not be adequately presented by the parties, particularly as they relate to Wisconsin practice.

Respectfully submitted,

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Voluntary Association of
The Trial Judges of
Wisconsin

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JUDGES OF WISCONSIN

Amicus Curiae, The Voluntary Association of the Trial Judges of Wisconsin, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Seventh Circuit entered in this proceeding on August 20, 1979.

INTEREST OF AMICUS CURIAE

The nature of the interest of the Voluntary Association of the Trial Judges of Wisconsin is stated in the annexed motion for leave to file brief amicus curiae.

ARGUMENT

The Voluntary Association of the Trial Judges of Wisconsin urges this Court to grant the petition to settle important questions of vital interest to the judiciary and people of the State of Wisconsin.

The Association submits that a clear and direct resolution by this Court of the first and second questions presented by the petition is essential to the proper and independent functioning of the state judiciary.

It is the Association's position that Bradley v. Fisher, 80 U.S. 335 (1872), as recently reaffirmed in Stump v. Sparkman, 435 U.S. 349

(1978), compels an affirmative answer to the first question presented. The Association is gravely concerned with the recent sharp increase in damage suits against Wisconsin judges and believes that, unless this question is clearly and affirmatively answered by this Court, such suits will only increase, to the detriment of the interests of the public in a properly functioning judiciary.

The second question presented is of particular concern to the Association. Beyond the incongruity of the holding -- that Judge Harvey's actions were outside the pale of his judicial role, but at the same time attributable to the State -- is its practical effect. The result of the decision below not only subjects a judge to the jurisdiction of the federal courts by virtue of his judicial office, but also deprives him of any defense arising out of his official position. Further, under this holding, a judge cannot look to the state or any political subdivision to pay the judgment or

defray the costs of defense in that he is not acting within the scope of his employment. Sec. 895.46, Wis. Stats. Nor, in the Association's experience, can a judge obtain judicial liability insurance to cover such risks.

Finally, like the prosecutor in Imbler v. Pachtman, 424 U.S. 409, 429 (1976), a Wisconsin judge "is amenable to professional discipline by an association of his peers." Errant Wisconsin judges may be disciplined or removed by the Wisconsin Supreme Court. Art. VII, sec. 11, Wis. Const. In addition, they may be removed by the State Legislature by impeachment and trial in the Senate, art. VII, sec. 1, sec. 17.06, Wis. Stats., or by address of both houses. Art. VII, sec. 13, sec. 17.09(4), Wis. Stats. In the final analysis, Wisconsin judges are answerable to the people of this State who may recall them by petition, sec. 9.10, Wis. Stats., or vote against their reelection.

CONCLUSION

The Voluntary Association of the Trial Judges of Wisconsin respectfully requests that this court grant the petition to resolve questions of crucial significance to the judiciary and people of Wisconsin.

Respectfully submitted,

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Association of the Trial
Judges of Wisconsin
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Dated February 4, 1980